

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH STANFORD,

Defendant-Appellant.

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UNPUBLISHED

August 16, 2002

No. 229663

Calhoun Circuit Court

LC No. 00-1544-FC

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

The jury convicted defendant of first-degree home invasion, MCL 750.110a(2), first-degree felony murder, MCL 750.316(1)(b), second-degree murder MCL 750.317, and assault with intent to murder, MCL 750.83. The trial court sentenced defendant to life imprisonment for first-degree felony murder, life imprisonment for second-degree murder, and 20-50 years' imprisonment for assault with intent to murder<sup>1</sup>. Defendant appeals as of right. We affirm defendant's conviction and sentence for first-degree felony murder, but vacate defendant's conviction and sentence for second degree murder and remand for correction of the Judgment of Sentence.

I. Basic Facts and Procedural History

This case arises out of the fatal shooting of Candace Irwin and the shooting of her mother, Lisa O'Connell. On January 18, 2000, defendant Stanford's co-defendant, Quincy Johnson, was at Latoma Porter's home. Porter is defendant Stanford's cousin. At trial, Porter testified that while Johnson was in her home, he pulled a gun out of his pocket. However, this did not surprise Porter because "[Johnson] always got a gun." Porter and Johnson left her home and went to pick up Stanford a/k/a/ "Kwon" and all three proceeded to Candace Irwin and Lisa O'Connell's residence. When Porter drove to the home, she did not park in front of the residence but rather parked in a commercial parking lot behind the house. Porter indicated that when she drove to the residence she did not know who lived there; it was her understanding that someone at that residence named "Jason" was going to help her install a CD player into her vehicle.

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<sup>1</sup> We note that in the Judgment of Sentence, the trial court recommended that all sentences run concurrently.

After Porter parked the car behind the house, Stanford and Johnson went to the front door, knocked and asked to speak with Jason Irwin. Through a closed door, Lisa O'Connell advised that Jason was not at home whereupon they asked to speak with Candace<sup>2</sup>. Similarly, O'Connell advised that Candace was not at home. Approximately five minutes later, they returned to the vehicle and all three returned to Porter's residence. When they arrived, Stanford and Johnson remained outside talking while Porter went inside. When Porter returned, she thought that Stanford and Johnson wanted to go to another house, but both Stanford and Johnson wanted to return to Candace Irwin and Lisa O'Connell's residence.

Porter dropped Stanford and Johnson off in the parking lot while she drove around to the front of the house and parked. Pursuant to Stanford and Johnson's instructions, Porter knocked on the door and asked to speak with Jason Irwin, Candace Irwin's brother and Lisa O'Connell's son. Though a closed door, O'Connell advised that Jason was not at home. When O'Connell observed the two individuals walk across the front yard and down the side of the yard, she telephoned 911. While securing all of the doors and windows, O'Connell saw two individuals through her kitchen window. Thereafter O'Connell heard the screen door to her back porch open, saw two black individuals come into her back porch and seconds later observed these two individuals kicking in the back door.

When the door gave way, both individuals entered O'Connell's home. When they were half way into the kitchen, O'Connell recognized Johnson and gave his name to the 911 operator, but did not recognize the second individual. When Johnson came face to face with O'Connell, he raised his hand and pointed a gun at her face. O'Connell indicated that she could see right down the barrel of the gun and said, "no Quincy, you can't do that, I have a little boy here." As O'Connell turned to protect the little boy with her body, she heard Johnson and his companion run through the kitchen and down the stairs into the basement. After Johnson and his comrade went into the basement, she walked over to the top of the stairs when she heard two gunshots ring out. O'Connell testified that after she heard the shots, she peered down the stairs into the basement as Johnson's companion was ascending. O'Connell testified that once Johnson's comrade reached the top of the stairs, he did not proceed directly out of the door, but rather, waited until Johnson reached the top of the stairs. Once Johnson reached the top of the stairs, he stepped right in between his comrade and O'Connell, pointed his gun and shot at O'Connell's head.

After the shooting, O'Connell was admitted to the hospital and subsequently released. The gunshot wounds inflicted upon Candace Irwin were fatal. Police apprehended Johnson as he fled the scene. Two days after the shooting, Joseph Stanford, voluntarily appeared at the police station and admitted that he participated in the events occurring at O'Connell's home on January 18, 2000.

Following a trial, the jury convicted defendant of first-degree home invasion, first-degree felony murder, second-degree murder and assault with intent to murder. The trial court

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<sup>2</sup> We note that Candace Irwin was Johnson's ex-girlfriend. Testimony adduced at trial revealed that Irwin was at her mother's house recovering from a gunshot wound to the back recently inflicted by Johnson.

sentenced defendant on his convictions for first-degree felony murder, second-degree murder and assault with intent to murder. Defendant appeals as of right. We affirm in part but vacate defendant's conviction and sentence for the lesser included second-degree murder offense as a violation of the constitutional prohibition against double jeopardy.

## II. Jury Instructions

Defendant first challenges the trial court's jury instructions render, on the grounds that the instructions, as given, obscured the intent elements of the different offenses thus inviting the jury to convict defendant as an aider and abettor of all of the crimes charged even if defendant entered the residence intending only to commit robbery. We do not agree.

At trial, defendant failed to object to the jury instructions and therefore failed to preserve these issues for appellate review. See *People v Cain*, 238 Mich App 95, 127; 605 NW2d 28 (1999). This Court reviews unpreserved claims of instructional error for plain error that affected substantial rights. *People v Aldrich*, 246 Mich App 101, 124-125; 631 NW2d 67 (2001).

The trial court must instruct the jury regarding the applicable law to fully and fairly present the case to the jury in an understandable manner. *People v Henry*, 239 Mich App 140, 151; 607 NW2d 767 (1999). This Court reviews jury instructions in their entirety and will not examine them piecemeal to establish error. *Id.* Indeed, "[e]ven if the instructions were somewhat imperfect," there is no error if the instructions "fairly presented the issues to be tried and sufficiently protected the defendant's rights." *Aldrich, supra* at 124.

Upon review of the record, we note that not only did defendant fail to object to the jury instructions at trial, defendant specifically approved the instructions:

[The Court]: Ms. Eifler [defense counsel], once again any objections to the instructions as given.

[Defense Counsel]: No.

[The Court]: Would you agree that it was at your request that great bodily harm was given?

[Defense Counsel]: I do your Honor.

[The Court]: *Do you waive written claims and contentions?*

[Defense Counsel]: *I do, your Honor.* (Emphasis added.)

Because defense counsel specifically, unequivocally and affirmatively waived any errors to the jury instructions as given, there remains no errors for this Court to review. *People v Ortiz*, 249 Mich App 297, 311; 642 NW2d 417 (2001). However, we were inclined to review the issue on the merits, we find that the trial court properly instructed the jury in all respects. Because defendant failed to object during trial to the instructions that he now challenges on appeal, we must determine whether relief is required to avoid manifest injustice. *Henry, supra* at 151.

The jury instructions properly included all of the elements of the charged offenses and did not otherwise exclude material issues, defenses and theories supported by the evidence. *People v Crawford*, 232 Mich App 608, 619; 591 NW2d 669 (1998). The trial court's methodical instructions fully and fairly presented the case to the jury for their consideration in an understandable manner. Accordingly, we find no manifest injustice warranting reversal.

### III. Double Jeopardy

Defendant also argues that the trial court erred in sentencing defendant on his conviction for first-degree felony murder and the lesser included second-degree murder charge. A review of the record reveals that defendant failed to raise this issue at trial and therefore failed to preserve it for our review. See *Cain*, *supra* at 127.

This Court reviews unpreserved claims of constitutional error for plain error that affected substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). Under the plain error doctrine we “should reverse only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings.” *Id.*

Both the United States and Michigan Constitutions contain provisions that prohibit “placing a defendant twice in jeopardy for a single offense.” *People v Green*, 196 Mich App 593, 594; 493 NW2d 478 (1992). This protection against double jeopardy not only attaches to successive prosecutions for the same offense, but also attaches to multiple punishments for the same offense. *Id.*; *People v Clark*, 243 Mich App 424, 429; 622 NW2d 344 (2000).

In *People v Clark*, *supra*, this Court declared that a defendant “cannot properly be convicted of both first-degree murder and the lesser included offense of second-degree murder for the death of a single victim.” *Id.* at 429. To rectify the error in *Clark*, this Court affirmed the first-degree murder conviction and vacated the second-degree murder conviction. *Clark*, *supra* at 430. Although the prosecution contends that this court may exercise its discretion in determining whether to vacate defendant's conviction for second-degree murder or modify the existing judgment of sentence to reflect that defendant's first-degree murder conviction is one conviction supported by two separate theories i.e. premeditated murder and felony murder, the latter result is not justified on the record currently before us.

Here, the predicate offense supporting defendant's first-degree felony murder conviction was first-degree home invasion. Thus, if the jury convicted defendant and the trial court sentenced defendant upon conviction for first-degree premeditated murder, first-degree home invasion and felony-murder, then it would be conceivable for this Court to decline to vacate the second-degree murder conviction and merely modify defendant's sentence to reflect that defendant's conviction and single sentence is really for one count of premeditated murder supported by two distinct theories; premeditated murder and felony murder. See *People v Bigelow*, 229 Mich App 218, 222; 581 NW2d 744 (1998).

However, here, the jury specifically acquitted defendant of the first-degree premeditated murder charge and found him guilty of first-degree felony murder and the lesser included offense of second-degree murder as regards Candace Irwin. In accord with the jury's ultimate verdict, the trial court sentenced defendant on his conviction for first-degree felony murder *and* on his conviction for the lesser included second-degree murder offense for the death of a single

individual. In so doing, the trial court violated the double jeopardy proscription contained in both the federal and state constitutions. Because the jury acquitted defendant on the charge of first-degree premeditated murder, the appropriate remedy is to vacate defendant's conviction and sentence for second-degree murder. *Clark, supra* at 429-430. Defendant's conviction and sentence for second-degree murder are vacated.

Affirmed in part, vacated in part and remanded for correction of Judgment of Sentence.

/s/ Kirsten Frank Kelly

/s/ Henry William Saad

/s/ Michael R. Smolenski